



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cecil Robert Sees the Ground

37 IBIA 162 (03/05/2002)

Reconsideration denied:
37 IBIA 168



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF CECIL ROBERT
SEES THE GROUND

: Order Docketing and Dismissing Appeal
:
: Docket No. IBIA 02-57
:
: March 5, 2002

On February 20, 2002, the Board of Indian Appeals (Board) received a notice of appeal which was forwarded to it from the office of Administrative Law Judge Robert G. Holt. The notice of appeal was filed by Constance Sees the Ground (Appellant). Appellant sought review of a December 19, 2001, order denying rehearing issued by Judge Holt in the estate of Cecil Robert Sees the Ground.

Judge Holt's order was mailed on December 19, 2001, and was accompanied by a notice to all persons having or claiming an interest in the subject matter of this proceeding. The notice stated:

This decision becomes final sixty (60) days from the date of mailing unless within such period a written notice of appeal shall have been filed in accordance with the provisions of 43 CFR 4.320.

The original written notice of appeal, signed by the appellant, the appellant's attorney, or the appellant's representative as provided in 43 CFR 1.3, shall be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. * * * A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. * * *

Appellant filed her original notice of appeal in Judge Holt's office. Appellant's certificate of service does not list the Board. The Board first learned of Appellant's appeal when it received the original notice of appeal from Judge Holt's office on February 20, 2002. This is more than 60 days after the date of mailing of the order denying rehearing. Since receiving this notice of appeal from Judge Holt's office, the Board has not received a copy from Appellant.

The Board has consistently held that an appellant fails to file a timely notice of appeal when that person is given proper appeal information, but chooses to file an appeal with an official other than the Board, resulting in receipt of the appeal by the Board outside of the time for filing an appeal. See, e.g., Estate of Frank Nelson Buffalomeat, 34 IBIA 120 (1999). Appellant was given correct appeal information, including the Board's mailing address, 1/ but chose to file her notice of appeal with Judge Holt, rather than with the Board. Despite the diligent efforts of employees in Judge Holt's office to forward the notice of appeal to the Board, the appeal was not timely when it was received.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Holt's December 19, 2001, denial of rehearing is docketed, but dismissed as untimely.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge

1/ The Board's mailing address has changed since Judge Holt issued his order denying rehearing. The address is now: 801 North Quincy Street, Suite 300, Arlington, VA 22203. However, the change of address was not the cause of the notice of appeal being untimely in this case.